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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,546	01/25/2002	Alfred Ebbinghaus	02-139	3046

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EXAMINER

KUHNS, ALLAN R

ART UNIT PAPER NUMBER

1732

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,546

Applicant(s)

EBBINGHAUS, ALFRED

Examiner

Allan Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 17-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. In response to this Office action, it is requested that applicant respond to paragraph one of the previous Office action.

2. Claims 17-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aspect in amended claims 17 and 18 that the at least partially hollow, external formed part is "non-open slotted" lacks support in the disclosure as filed. The disclosure as filed appears to be silent with regard to the presence or absence of open slots in the external formed part.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17, 18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (3,087,807) as set forth in previous Office actions. Allen et al. illustrate non-open slotted external formed parts (which may be metal) in Figure 2 with structural form 19 and in Figures 5 and 6 with hollow structural form 26.

4. Claims 18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiedler et al. (2,979,392) in view of Niebylski et al. (3,873,392) as set forth in previous Office actions. At column 3, lines 53-55, Fiedler et al. disclose that a

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hollow pipe may be used as a hollow object to be filled with metal foam, and it is submitted that one of ordinary skill in the art would infer from this disclosure of Fiedler et al. that such hollow pipe is to be non-open slotted since there is no mention of slots in the reference.

5. Applicant's arguments filed January 30, 2006 have been fully considered but they are not persuasive. Applicant argues that it is critical to the process of the present invention as claimed in independent claims 17 and 18 that the metal external formed part be non-open slotted. Applicant then argues that the cited Allen reference at column 4, lines 52-62 specifically sets forth a slotted tube which cannot be used in the process of the present invention. This is not persuasive because Allen et al. only state that use of a slotted metal tube is "ideal", not that use of such a tube is critical or even mandatory.

With regard to the ground of rejection based on Fiedler et al. as a primary reference, applicant notes that the Fiedler et al. patent teaches a process wherein foaming only occurs in a molten state, which is quite different from the powder foaming process claimed in claim 18. But in this regard, claim 18 only requires "introducing into the hollow external formed part foam material and blowing agent".

Applicant also argues that there is no suggestion in Fiedler et al. as to how to use a precursor material in a closed hollow tube, but this is not commensurate with the language of claim 18 and as previously noted by the examiner, Fiedler et al. teach the use of a hollow pipe at column 3, line 54.

Applicant also argues that Niebylski et al. do not cure efficiencies noted in Fiedler et al., but the examiner does not agree that such alleged deficiencies exist.

Applicant also argues that it is clear from the drawings of the instant disclosure that the external formed part does not have a through slot. But, to the examiner, these drawings are not in sufficient detail to determine the presence or absence of any slots. Perhaps more importantly, given that applicant now asserts that it is "critical" that the external formed part be "non-open slotted", it is surprising that this feature was not at least mentioned in the disclosure as filed.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-

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1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ALLAN R. KUHNS
PRIMARY EXAMINER